

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-cv-10573-RWZ

JOSEPH SCHMITT,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
CORRECTION, et al.,

Defendants.

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Defendants hereby oppose Plaintiff's Motion for Reconsideration, filed with this Court on July 23, 2007. As grounds therefore, defendants refer this Court to their arguments in their Motion to Dismiss, filed on August 31, 2006, and Renewed Motion to Dismiss, filed on March 23, 2007.

This Court properly dismissed defendants Maloney, Allen, Grossi, Nolan, Kennedy, Thomas, Smith and Mulvey because Schmitt failed to make proper service within the time period required by the Federal Rules of Civil Procedure. The Complaint in this case was filed on February 18, 2005. Several of the defendants dismissed by this court were not served with the Complaint until after the filing of defendants Motion to Dismiss.

Defendants wish to correct a statement made in Defendants' Opposition to Plaintiff's Motion for Reconsideration, filed with this Court on March 6, 2007. Defendants' opposition incorrectly states that defendant Grossi has not yet been served with the Complaint. Mr. Grossi was served with the Complaint on January 21, 2007. To

date, the docket sheet does not reflect that a return of service for Mr. Grossi was ever filed. However, this Court dismissed the Complaint against other defendants who were not served until January 2007, namely defendants Thomas, Smith and Mulvey. See Order dated February 5, 2007. As such, the Complaint against defendant Grossi was properly dismissed.

The Court properly dismissed the Complaint against the remaining defendants, Kathleen Dennehy and the Department of Correction, on July 10. 2007. As such, Schmitt's Complaint was correctly dismissed in its entirety.

Dated: July 25, 2007

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Jody A. Brenner

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CERTIFICATE OF SERVICE

I hereby certify that on this date a true copy of the above document was served on plaintiff, pro se, via first class mail.

/s/ Jody A. Brenner

Dated: 7/25 /2007

Jody A. Brenner, Counsel